

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

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MB Docket No. 05-311

COMMENTS OF THE CITY OF FLORENCE, KENTUCKY

These Comments are filed by the City of Florence, Kentucky in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Florence, Kentucky believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Florence, Kentucky ("City") has a population of 26,500. Our franchised cable provider is Insight Communication.

Our Current Franchise

Our current franchise began on August 27, 1996 and expires on August 26, 2011. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. However, pursuant to HB 272, as of January 1, 2006, the local cable franchising authorities in Kentucky no longer receive cable franchise fees. Instead, the Commonwealth of Kentucky imposes a 3% excise tax on multichannel video programming service. The tax is billed to subscribers and collected by providers. Additionally, the Commonwealth of Kentucky imposes a tax of 2.4% on gross revenues from multichannel video programming services and a tax of 1.3% on gross

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revenues from communication services. According to HB 272, local cable franchising authorities will be "held harmless" by the state for the amount of cable franchise fee revenue they have *historically collected*.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. Section 46(A) provides that the cable operator shall make available channel capacity and the necessary electronics to provide at least three (3) non-commercial channels for public access for public, educational, and governmental use. The above requirements do not require separate channels specifically for the City. Pursuant to the franchise, Insight will make available the required channels on a dedicated basis to meet the requirements of this and any other franchise, which it holds within the geographical confines of Kenton and Boone counties. Additionally, the cable operator shall have the right to broadcast other programming on access channels when such channels are not being utilized for access programming, however in all events, access programming shall have priority.

Section 51 of the City's franchise contains the franchise's institutional network ("I-Net") requirements. It requires the return path that is in place for the current institutional network will be maintained so as to allow live broadcast from institutions on the institutional network.

Section 35 of the City's franchise contains the requirements regarding emergency alerts. Section 35 states that the operator shall comply with all Federal Emergency Alert requirements and that operator will also design its system to allow local authorities to send out an emergency broadcast.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Section 13 addresses notification of customers:

- A. In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of the rights and responsibilities of the customer and the Operator with respect to the cable system, Operator shall provide customers with a written "Notice of a Customer's and Operator's Rights and Responsibilities."
- B. Unless expressly prohibited by the State, Operator may comply with any notice requirements by providing said "Notice" by mail to the subscriber, through newspaper publication or over the cable system, on a channel clearly designated for the dissemination of such information – (such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose).

Section 14 address the minimum contents of customer notification:

- A. When the Operator provides a Notice to customers concerning their rights such "Notice" should contain the following:

1. an up-to-date listing of services provided;
2. *notification of a subscriber's ability to purchase or lease, from the* Operator, parental control mechanisms, or other device which will prohibit the viewing of a particular program service during a period selected by the subscriber;
3. a listing and explanation of rates and charges, credit refund policy, connection and involuntary disconnection policies;
4. the complaint resolution procedures;
5. a listing and explanation of billing options available (such as monthly or yearly, and/or discounts for pre-payments);
6. the customer service office hours and telephone number(s);
7. the method of securing a voluntary disconnection; and
8. the equipment use and return policy together with any required security deposits.

B. The "Notice" shall be in plain, simple understandable English.

C. The "Notice" may be delivered to a subscriber via an insert in the subscriber's periodic invoice, through a special mailing, by newspaper or publication over a channel clearly designated for the dissemination of such information.

Section 15 addresses billing practices:

A. Whenever there is a change in Operator's billing practices or payment requirements, Operator shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.

B. In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

Section 16 addresses credits for service outages, interruptions, substandard signal or picture quality:

Operator shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding one service day in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Operator.

Section 17 addresses customer service performance. Section 17(A) contains the following definitions:

1. Normal Business Hours: This means those hours during which most similar businesses in the community are open to serve customers. This will include some evening hours (at least one night per week) and/or some weekend hours.

2. Normal Operating Conditions: This means conditions that are within the control of the operator. Those conditions which are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions which are ordinarily within the control of the operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

3. Service Interruption: This means a service outage which is not caused by the failure or malfunction of a subscriber's television receiver or by the error of the subscriber. This term affects the timing of when the operator must respond to a service problem.

Section 17 (B) addressed customer service standards as follows:

Office hours and telephone availability:

1. The operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained company representatives on the next business day.

2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. The Operator shall not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless an historical record of complaint indicates a clear failure to comply.

3. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

4. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

5. Operator will locate an office to serve as a center for payment and equipment exchanges within the territorial confines of Boone County but not necessarily within the

unincorporated area thereof. The office location will be selected by Operator so as to allow convenient access by subscribers and will be open during normal business hours.

Section 17(C) address installations, outages, and service calls and states:

Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 150 feet from the existing distribution system.
2. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 4 hours after the interruption becomes known.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
4. The Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
5. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Section 17(D) addresses communications between cable operator and cable subscribers and provides:

1. Notifications to subscribers:

- a. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request;
 - i. products and services offered;
 - ii. prices and options for programming services and the conditions of subscription to programming and other services;
 - iii. installation and service maintenance policies;
 - iv. instructions on how to use the cable service;
 - v. channel positions of programming carried on the system; and
 - vi. billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

b. Customers will be notified of any changes in rates, programming service or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

a. Bills will be clear, concise, and understandable. Bills must be fully itemized, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

b. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

3. Refunds:

Refund checks will be issued promptly, but no later than either -

a. in the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

b. within thirty (30) days after return of equipment supplied by the cable operator.

4. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Section 22 addresses service requests, complaints, and response times and states:

A. Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a subscriber, Operator shall respond to the service requests and complaints of subscribers within thirty-six (36) hours after the need for service becomes known. Moreover, except in emergency situations, Operator shall inform the customer whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, unless the subscriber decides otherwise, Operator shall make every effort to notify the customer as soon as possible, and to re-schedule the service call.

B. Operator may rank-order service calls in order of severity. Total outages will take precedence over area outages, area outages take precedence over a single home; and a multi-channel problem takes precedence over a single channel problem.

Our franchise requires that the cable operator currently provide service to the pursuant to the following line extension policy outlined in Section 32:

A. Operator and City recognize that it is a desirable objective to extend the operator's cable network to pass as many potential residential customers as possible so long as the Operator is not unduly burdened financially in attempting to reach this objective. In furtherance of the above. Operator shall extend service to any area within the franchise area that has a density of thirty-five (35) household passings per mile of aerial plant, or forty-five (45) household passings per mile of underground plant, or fractional equivalent thereof, as measured from the extremity of the trunk cable nearest the unserved area ("minimum density"). With any such extension line extension, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible and within one hundred and fifty (150) feet of said line extension. In addition, Operator agrees to extend service to areas that have a density of greater than twenty (20) homes per mile and less than thirty (30) homes per mile provided that the cost to construct such line extensions shall not exceed \$2,000 per passing. This cost shall be adjusted by the Consumer Price Index used for rate calculations by the Federal Communications Commission during each year of this franchise.

B. In areas where the density is below the minimum density, homes may receive residential service if arrangements are made for cost-sharing of construction costs for service to that area. Operator shall use the following cost-sharing formula: Operator shall bear its pro-rata share of the then current cost per mile of plant construction based on a multiple of the actual number of potential residential subscribers per mile, divided by the minimum density. Mileage will be measured from the nearest point on the nearest trunk line.

C. Once the aforementioned density requirements are satisfied, the Operator shall be obligated to provide residential service to qualified areas within one hundred eighty (180) service days of a request. If construction is not completed within said one hundred (180) days due to circumstances not under the control of Operator, Operator will not be in violation of this ordinance.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements in Section 45:

A. TKR will complete the necessary technical upgrades to enable activation of 80 channels on the cable system for use in providing service directly to customers by December 31, 1998. In order to complete this upgrade TKR will replace the existing AML microwave system with fiber optic cables to transport signal from our headend to secondary distribution sites. TKR will also complete the necessary equipment modifications in the headend and at each hubsite to fully enable the activation of 80 channels by December 31, 1998.

B. The system will be designed with the ability to pass a combination of standard NTSC analog television signals and digital signals on the forward passband. The system will be capable of bi-directional operation.

Please be advised that our cable system was rebuilt in the past ten years. Additionally, Insight's system in the City provides cable modem service to the same set of residents, which receive cable video services.

Section 50 of the City's franchise contains a "most-favored-nations" provision, which states the following:

If at any time during the existence of this franchise, Operator provides another area or City in its Northern Kentucky service area either more favorable terms, more advanced technology of service, greater number of channels or services deemed to be more favorable than those provided to the City hereunder, then said more favorable term or condition shall be extended to the City within a reasonable period of time upon request of the City.

Section 10(A) of the City's franchise contains the following insurance requirements:

General Liability Insurance

Bodily injury per person	\$3,000,000.00
Bodily injury per occurrence	\$5,000,000.00
Property damage per occurrence	\$1,000,000.00
Property damage aggregate	\$1,000,000.00

Automobile Insurance

Bodily injury per person	\$1,000,000.00
Bodily injury per occurrence	\$3,000,000.00
Property damage per occurrence	\$1,000,000.00

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement. Section 12(B) states:

The City shall have the right to review at Operator's primary administrative office, all records, pertaining to the City's regulation of Operator's cable operations in the City, on seven (7) days written notice. Such review, unless mutually agreed upon, or judicially ordered, should occur within Operator's regular office hours.

Section 12(C) states:

The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of Operator. If, after a financial audit, it is determined that Operator has underpaid amounts owed to the City (in excess of Five percent (5%)), then the City may require Operator to reimburse the City for the actual cost of the audit. Provided, however, absent fraud, all audits shall be binding on the City.

Section 12(D) states:

Operator, at the local office shall keep complete and accurate books and records of the key aspects of the system's operation in the City for at least the preceding three years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, Operator shall make available, on seven (7) days advance written notice, those records that pertain to its operation of the system that may be required by any other Federal or State agency having jurisdiction over cable operators. Provided, however, that with respect to the obligation to maintain financial records, Operator shall only be required to maintain the financial records required by Federal law.

Additionally, Section 43 addresses default of the franchise; revocation, termination or cancellation of the franchise:

A. When any event, act or omission (on the part of the Operator) occurs which represents a substantial violation of an integral provision of this ordinance, or materially compromises the corporate character, or legal, financial or technical integrity and/or stability of the system or the Operator to such a degree that the interests of the subscribers are negatively affected, then such event, act or omission may be considered a major breach of this ordinance. Under such circumstances, the City shall notify the Operator in writing, of the specific breach, and direct Operator to comply with all such provisions of this ordinance.

B. Provided, however, where Operator satisfactorily corrects any of the enumerated conditions, within ninety (90) days from receipt of written notice, then in no event shall the enumerated condition be weighted against Operator in any subsequent review of franchise performance.

C. Provided, however, that if the enumerated conditions cannot be corrected within ninety (90) days from written notice because of circumstances beyond Operator's control, then Operator shall not be deemed in violation of the franchise.

D. Within seventy-five (75) days, after such written notice is delivered to Operator, the City shall conduct a public hearing on the matter.

E. The City shall provide written notice to an Operator, and any surety, of the time and place of said public hearing.

F. At the time of the hearing, the Operator may present information on the current status of the alleged breach of the franchise agreement. If the situation has been resolved, or steps are being taken to resolve the situation, then the Operator may present the information at the hearing.

G. If the affected Operator fails to attend the hearing, and has not requested a continuance of the hearing, then Operator shall be deemed to have waived its right to a further continuation of the matter, and may be declared in default of the franchise agreement.

H. After the public hearing, the City may determine the Operator to be in compliance and dismiss the matter, or may determine that Operator has cured any non-compliance and thereby dismiss the matter. However, the City may determine that an ordinance violation exists and remains uncured. Consequently, upon a finding that Operator substantially violated an integral ordinance provision, or failed to cure a material outstanding ordinance violation, the City shall direct the Operator to take corrective action within a specified period of time, and thereafter, if Operator has not taken such corrective action, may revoke, terminate, or cancel the franchise, unless the Operator presents sufficient mitigating circumstances or the corrective action cannot be reasonably taken in the time allotted.

I. When the City directs corrective action to take place within a specified time or declares Operator in default of the franchise agreement, that declaration shall be reduced to writing, and the notice of corrective action or default shall be delivered to such franchised Operator, and any surety, within fifteen (15) days of the City's action.

J. If within sixty (60) days after the specified time for corrective action has expired, the Operator, or surety does not take significant action to rectify the breach, or submit a plan detailing how the Operator will eliminate the breach, then the City may revoke Operator's franchise, and shall notify the affected Operator, and surety forthwith, unless there are mitigating circumstances.

K. Notwithstanding the above, should City notify Operator of its intention to revoke, Operator shall have the right to sell its assets to an independent third party. The City will not unreasonably withhold its consent to such assignment and shall grant its consent pursuant to the "Assignment of Transfer" section of this franchise ordinance. Upon assignment of this franchise, pursuant to this revocation section, assignee shall receive a franchise in full force and effect, free of default, for the term remaining on assignor's franchise. Provided, however, that such sale shall not relieve Operator of any liability for its default.

L. Notwithstanding any other provision of this franchise, it is the intent of the City not to subject the Operator to penalties, fines, forfeitures, or revocation of the franchise in any of the following instances:

1. In instances or for matters where a violation of the franchise by the Operator was unintentional and of de minimus effect on subscribers, the public or the City; or
2. Where there existed circumstances reasonably beyond the control of the Operator that precipitated a violation of the franchise, or were deemed to have prevented the Operator from complying with any term or condition of the franchise; or
3. Where there is no pattern of violation or occurrence of repeated violation of the same matter over time after notification by the City.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides in Section 7 that changes in law which affect the rights or responsibilities of either party under the City's franchise agreement will be treated as follows:

In any case of an actual inconsistency between any provision or section of this ordinance, and any provision or section of a Federal or Kentucky rule, regulation, or law, then the Federal or Kentucky rule, regulation, or law shall not only supersede the effect of the ordinance, but also control in any local application.

Please noted, that in addition to federal law, Section 163 of the Kentucky Constitution, requires that cable operators must obtain franchises to use city or county streets for any purpose. It is significant to note that the debates of the Constitutional Convention indicate that the purpose of Section 163 "was to prevent the Legislature from authorizing the indiscriminate use of the streets of the city by public utilities without the city being able to control the decision as to what streets and what public ways were to be occupied by such utilities." Mt. Vernon Tel. Co, Inc. v City of Mt. Vernon, 230 S.W.2d 451, 453 (Ky. Ct. App. 1950). In Ray v. City of Owensboro, 415 S.W. 2d 77, 79 (Ky. Ct. App. 1967), the court also stated that the "purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants."

In City of Owensboro v. Top Vision Cable Co. of Ky., 487 S.W.2d 283, 286-87 (Ky. Ct. App. 1972), where Top Vision Cable claimed that Owensboro lacked the authority to require that local CATV operations obtain franchises, the Court reiterated the interpretation of Section 163

that was set forth in Ray. The court also rejected Top Vision's argument that the city could not issue franchises because the "cables and wires will be placed on poles and strung over public ways where existing utility companies have the right to operate by other franchises." City of Owensboro, 487 S.W. 2d at 287. The court stated, "under its general obligation to provide its citizens with safe, clean and unobstructed public ways, the presence of television cables, even in connection with existing utilities, would be an added burden on the city." Id. Thus, the court concluded that the city had the right to require a franchise because the presence of television cables would be an additional responsibility.

Competitive Cable Systems

There are no competing providers in the City. The City has not denied any provider the opportunity to serve in our community. Please note that the City does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the City of Florence, KY. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.


Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Florence, Kentucky therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the

operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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